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CITY OF EUREKA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

ECOLOGICAL RIGHTS FOUNDATION, a  
non-profit corporation,

Plaintiff,

v.

CITY OF EUREKA, a municipal corporation,

Defendant.

Case No. 4:22-cv-01459-JST

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF MOTION TO MODIFY  
THE CONSENT DECREE**

Date: December 12, 2024  
Time: 2:00 p.m.  
Courtroom: 6  
Judge: Honorable Jon S. Tigar

Trial Date: Vacated  
Action Filed: March 8, 2022

Pursuant to Federal Rules of Evidence, Rule 201, Defendant City of Eureka (“City”) hereby requests the Court to take judicial notice of the following documents in support of its Motion to Amend the Consent Decree:

1. *Waste Discharge Requirements for the City of Eureka Elk River Wastewater Treatment Plant Humboldt County*, National Pollutant Discharge Elimination System Permit No. CA0024449, California Regional Water Quality Control Board, North Coast Region Order No. R1-2016-0001 as adopted on June 16, 2016 (“2016 NPDES Permit”). The 2016 NPDES Permit is available at [https://www.waterboards.ca.gov/northcoast/board\\_decisions/adopted\\_orders/pdf/2016/160616\\_0001\\_Eureka\\_Elk\\_River\\_WWTP\\_NPDES.pdf](https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2016/160616_0001_Eureka_Elk_River_WWTP_NPDES.pdf) and was last accessed by Anya Kwan on September 25, 2024. A true and correct copy of this document is attached to the Declaration of Anya Kwan (“Kwan Decl.”) ¶2, Ex. A.

2. California Regional Water Quality Control Board, North Coast Region *Cease and Desist Order* No. R1-2016-0012 as adopted on June 16, 2016 (“2016 CDO”), as subsequently amended on June 29, 2020 by Order R1-2020-0020 (“CDO”). The CDO is available at [https://www.waterboards.ca.gov/northcoast/board\\_decisions/adopted\\_orders/pdf/2020/20\\_0020\\_Eureka%20CDO%20Modification.pdf](https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2020/20_0020_Eureka%20CDO%20Modification.pdf) and was last accessed by Anya Kwan on September 25, 2024. A true and correct copy of this document is attached to the Kwan Decl. ¶3, Ex. B.

3. First Amended Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, filed April 8, 2024, in the lawsuit pending in the Sacramento County Superior Court, styled as *Humboldt Waterkeeper, et al. v. North Coast Regional Water Quality Control Board, et al.* (Case No. 24WM00044) (“Writ Petition”). A true and correct copy of this document is attached to the Kwan Decl. ¶8, Ex. C.

4. *Waste Discharge Requirements for the City of Eureka Elk River Wastewater Treatment Plant Humboldt County*, National Pollutant Discharge Elimination System Permit No. CA0024449, California Regional Water Quality Control Board, North Coast Region Order No. R1-2023-0016 as adopted on October 5, 2023 (“2023 NPDES Permit”). The 2023 NPDES Permit is available at

1 [https://www.waterboards.ca.gov/northcoast/board\\_decisions/adopted\\_orders/pdf/2023/23\\_0016](https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2023/23_0016)  
 2 [NPDES.pdf](#) and was last accessed by Anya Kwan on September 11, 2024. A true and correct  
 3 copy of this document is attached to the Kwan Decl. ¶5, Ex. D.

4 5. Regional Water Quality Control Board, North Coast Region Staff Summary  
 5 Report from October 5, 2023 which is available at  
 6 [https://www.waterboards.ca.gov/northcoast/board\\_info/board\\_meetings/10\\_2023/pdf/4/eureka-](https://www.waterboards.ca.gov/northcoast/board_info/board_meetings/10_2023/pdf/4/eureka-ssr-oct2023.pdf)  
 7 [ssr-oct2023.pdf](#) and was last accessed by Anya Kwan on September 25, 2024. A true and correct  
 8 copy of this document is attached to the Kwan Decl. ¶4, Ex. E.

9 6. Rescission Order No. R1-2023-0021, Rescission of Cease and Desist Order No.  
 10 R1-2016-0012, as subsequently amended by Order R1-2020-002 as adopted on December 18,  
 11 2023. The Rescission Order is available at  
 12 [https://www.waterboards.ca.gov/northcoast/board\\_decisions/adopted\\_orders/pdf/2023/R1-2023-](https://www.waterboards.ca.gov/northcoast/board_decisions/adopted_orders/pdf/2023/R1-2023-0021.pdf)  
 13 [0021.pdf](#) and was last accessed by Anya Kwan on September 11, 2024. A true and correct copy  
 14 of this document is attached to the Kwan Decl. ¶6, Ex. F.

15 7. Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief,  
 16 filed March 1, 2024, in the lawsuit pending in the Sacramento County Superior Court, styled as  
 17 *Humboldt Waterkeeper, et al. v. North Coast Regional Water Quality Control Board, et al.* (Case  
 18 No. 24WM00044). A true and correct copy of this document is attached to the Kwan Decl. ¶7,  
 19 Ex. G.

20 Judicial notice is appropriate pursuant to Federal Rule of Evidence 201(b), which provides  
 21 that the Court may notice a fact that is not subject to reasonable dispute because it “can be  
 22 accurately and readily determined from sources whose accuracy cannot reasonably be  
 23 questioned.” Judicial notice may be taken of court filings and other matters of public record.  
 24 *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746, fn. 6 (9th Cir. 2006) (citing  
 25 *Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir.  
 26 1998)).

27 Items 1, 2, 4 and 6 are orders issued by the Regional Water Quality Control Board  
 28 (“Regional Board”) that are available online whose accuracy cannot be reasonably questioned.

1 Items 3 and 7 are public records on file with the state courts whose accuracy cannot reasonably be  
2 questioned. Item 5 is a summary report from Regional Board staff that is available online whose  
3 accuracy cannot reasonably disputed because the Summary Report was drafted by representatives  
4 of a public entity and is issued on the official letterhead of the Regional Water Board. The City  
5 respectfully requests that the Court take judicial notice of these matters in considering its Motion  
6 to Amend the Consent Decree.

7  
8 Dated: October 4, 2024

BEST BEST & KRIEGER LLP

9 By: /s/ Anya Kwan

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11 SHAWN D. HAGERTY  
12 ANYA KWAN  
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